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April 1, 2016

Ms. Lauren Bisnett, Public Affairs Office  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, California 94236

Re: Comments on Draft GSP Emergency Regulations

Dear Ms. Bisnett:

Thank you for the opportunity to comment on the Draft Groundwater Sustainability Plan (GSP) Emergency Regulations. Kings River Conservation District (KRC D) appreciates the Department of Water Resources' (DWR's) tremendous effort in preparing such an important document while also offering a transparent and informative process for public review and input. We offer the following comments for your consideration:

### **General Comments**

- Provided an agency is meeting its milestones, as determined through monitoring programs described in the agency's DWR-approved plan, it seems unnecessary to audit other aspects of an agency's performance. Local control is a key goal of SGMA, and agency resources should be expended implementing plans, not continually justifying plans to DWR.
- Words like "adequate" and "complete" are used throughout the draft regulations, but it's unclear what such descriptors mean unless those and other similar terms are defined. Defined terms for these and similar current general terms are necessary.
- The draft regulations should describe a conflict resolution mechanism if Groundwater Sustainability Agencies (GSAs) find themselves in disagreement with not just local agencies, but also with the Department of Water Resources (DWR) on its review of Plans, coordination or progress toward sustainability.
- Clarification is needed with respect to instances of "formal" vs. "informal" consultation from the State Water Resources Control Board (SWRCB or Board). Define clear thresholds. For example, California Occupational Safety and Health Association (OSHA) can be consulted with or without inviting intervention.

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## **Article 1. General Provisions**

- 350.2.(a) The notion that a Plan must achieve the sustainability for "the entire basin" is inconsistent with the statute allowing multiple GSPs within a basin and the "good actors" provision at WC Sec 10735.2(e); a GSA cannot be responsible for areas beyond its jurisdiction. This approach is throughout the draft and needs to be revised.
- 350.2.(g) The ability of DWR to evaluate a Plan "at any time" for compliance is inconsistent with Sustainable Groundwater Management Act of 2014 (SGMA or Act) and other provisions of the draft regulations (sections 355.2 and 355.6). There should be certainty that a GSP is adequate when completed and approved and that GSAs not be required to review their progress sooner (5 year intervals) than stipulated in SGMA. It is critical, as a GSA moves forward, that entities are not wasting the significant time and money to implement an "approved Plan," as a result of DWR required ongoing modifications.
- We suggest adding as a principle, consistent with the Legislative Intent of SGMA (WC 10720.1(d)) and the Governor's signing statement, that groundwater management is best accomplished at the local level and local GSAs are the designated entities in charge of developing and implementing SGMA.

## **Article 2. Definitions**

- 351.(e) The definition of "baseline" should be modified to: (i) tie to WC 10727.2 of SGMA "The plan, may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015," and (ii) in the context of surface water supplies, "baseline...shall include the historic average reliability and deliveries" (WC 10733.2(b)(2)).
- We suggest adding a definition for "groundwater recharge", that it includes direct augmentation of groundwater and "in-lieu" recharge, consistent with the attempt to clarify SGMA through AB 617 in 2015.
- We suggest adding definitions for "basin" and "subbasin", or, include reference to California Bulletin 118 definitions.
- We suggest adding definitions to other general terms such as "adequate" and "complete" that are used throughout the document or modifying the document to better quantify and qualify those general terms.

### **Article 3. Technical and Reporting Standards**

- Article 3 standards are prescriptive and a number of them may not be realistic or consistent with existing local practices. For instance at 352.6.(a)(2), measuring groundwater elevations within 0.1 feet accuracy is not appropriate. It is also inappropriate to require GSAs to convert all spatial data to coordinate systems that are preferred by DWR.
- 352.6.(b)(3)(A) We suggest revising this subarticle so that it is not misinterpreted as a new requirement that wells monitored as part of SGMA must also be reported to the California Statewide Groundwater Elevation Monitoring (CASGEM) program which is not required by statute.
- 352.6.(b)(3)(D) and 352.6.(b)(4) Many wells are open bottom design and do not have perforations. Many more lack other well construction information. Deeming such wells inadequate as sources of data disqualifies a significant number of Central Valley wells that would need to be replaced with costly new, constructed monitoring wells. Existing wells were apparently adequate enough for the State to determine which basins and subbasins will be regulated under the Act. Those same wells are now being deemed inadequate for use by GSAs to determine GSP effectiveness. A best management and financially prudent practice would seem to allow GSAs to use currently available systems and data to measure effectiveness of their GSPs and if and only if evidence is shown to the contrary should additional facilities and data be required. There are many data intensive requirements throughout the regulations that apply to this concept. For brevity we will only mention this concern here.
- 352.6.(f) The exception that "proprietary data and reports need not be disclosed unless requested by the Department to resolve...disputes" conflicts with words like "all" and types of information outlined in other Plan and reporting Articles and Sub-articles.
- 352.8 SGMA does not require a "coordinated data management system" and this section implies the DMS will be Web connected to DWR. Such a requirement is too prescriptive and should not be included in the regulations.

### **Article 4. Procedures**

- 353.1. If an Agency withdraws a plan what is the protocol after the plan has been withdrawn?
- 353.4.(b) The sub article states that all materials must be accompanied by a "penalty of law" statement and that the person signing must make inquiry of the "persons who manage the system or those persons directly responsible for gathering the information". This is not a requirement specified by SGMA and "penalty of law" is undefined. We request that this requirement be removed.

## **Article 5. Plan Contents**

- 354.8.(a)(5) It is not appropriate to include mapping of all wells, including showing de minimis extractors, as part of the Plan, before SGMA powers are implemented. This could require registration of wells and SGMA powers are not provided for until a GSA has submitted a Plan. It may be more appropriate to require that a Plan provide for developing such information.
- 354.14.(a)(3) The "definable bottom of the basin" is difficult and in some cases impractical to identify, for example, in confined aquifers many thousands of feet thick where the only available data may be from oil and gas industries.
- 354.18.(b)(2)(B) The regulations should specify what happens if a basin does not possess sufficient data to go back the required "minimum of 10 years, or as is sufficient to adequately...estimate and project future water budget information..."
- 354.18.(d)(1). The term "central valley land use" is undefined. If the regulation is referring to the Central Valley it should be removed as an inappropriate reference to a specific region of the state.
- 354.28.(e) The subarticle requires that thresholds for the various undesirable results be supported by "clear and convincing evidence". This is inappropriate, particularly since additional information will be developed through the Plan process after SGMA powers can be invoked, it is not provided by SGMA, and it will invite challenges to local efforts of GSAs. Also, what clear and convincing evidence exactly is would be subject to interpretation. Our comments in the third bullet under Article 3, above, would apply here.

## **Article 6. GSP Evaluation and Assessment**

- 355.6.(b) Provided an agency is meeting its milestones, as determined through monitoring programs described in the agency's DWR-approved plan, it seems unnecessary to audit other aspects of an agency's performance. Local control is a key goal of SGMA, and agency resources should be expended implementing plans, not continually justifying plans to DWR.
- 355.8. Regarding consultation with the SWRCB, the subarticle cites as authority Water Code sections 10735.2 and 10735.4, which in turn describes consultation by DWR as a precursor to placing a basin in probationary status. With the stakes so high, section 355.8 should further clarify the times and circumstances when such consultation will be warranted, and should include some provision for notifying an agency and providing an opportunity to cure defects before consulting with the SWRCB.
- 355.10.(d) As written this would indicate a lack of commitment to providing assistance to resolve disputes and ignores "good actor" provisions of the Act.

## **Article 7. Reports, Assessments and Amendments**

- 356.4. The requirements for the annual report are much more specific than the statute (WC sec 10728). In particular, this subarticle requires summaries of groundwater extractions by water use sector and location of extractions (raw, discrete data instead of aggregated data as required by statute) which is inappropriate.
- 356.4.(b)(5)(A) Requiring change in groundwater storage maps for each principal aquifer is problematic for confined aquifers, such as those underlying the Corcoran Clay, since groundwater elevations are influenced by spatially variable change in head pressures.
- 356.6.(b) This subarticle is confusing. DWR may "provide recommended corrective actions to address any deficiencies in [an] annual report," and shall treat the agency's plan as conditionally adequate until the deficiencies are addressed. Are the recommended corrective actions then actually "recommended" if the agency shall be sanctioned until deficiencies are addressed? What is intended by this language?
- 356.10. The amount of information that an agency must compile seems appropriate in the case of a plan amendment, but not for a five year review. If milestones are not being met, then more information is appropriate. But otherwise it should be sufficient for an agency to prove that it is meeting its milestones.

## **Article 8. Coordination Agreements**

- 357.4. For intra-basin, the term "Submitting Agency" is introduced (which is not defined) but will be a "single point of contact with the Department". It is to "rectify data and interpretations regarding basin conditions". The term "Submitting Agency" appears to be the same as "Coordinating Agency," as used in sections 355.10(a) and 351(i). If these terms are to remain in the regulations, clarification is requested.
- 357.4. (h) and (i). These two paragraphs require intra-basin Coordination Agreements to be binding. This requires more definition. Who is required to be bound and to what terms they are bound is not specified. Also binding terms can be written in many ways allowing for out clauses. Section 353.10 allows for withdrawing a plan which although not the Coordination Agreement would seem to allow also for termination of agreements (Intra-basin Coordination Agreements) developed to ensure completion of plans thus unbinding an such requirements even if this term is clarified.

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April 1, 2016  
Page 6

Thank again you for your consideration of our comments. If you have any questions or require additional information, please do not hesitate to contact Eric Osterling at [eosterling@krcd.org](mailto:eosterling@krcd.org) or (559) 237-5567 ext. 135.

Respectfully,

A handwritten signature in black ink that reads "Paul G. Peschel". The signature is written in a cursive style with a large, stylized 'P' and 'P'.

Paul G. Peschel, P.E.  
General Manager

PP/EO/dp

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